

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION**

NEW LIFE ADULT DAY CARE,

Plaintiff,

VS.

**PHILADELPHIA INDEMNITY
INSURANCE COMPANY,**

Defendant.

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CIVIL NO. 7:17-cv-361

**DEFENDANT PHILADELPHIA INDEMNITY INSURANCE
COMPANY'S NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1332, 1441(b) and 1446(a), Philadelphia Indemnity Insurance Company, the Defendant in the above-styled case, files this Notice of Removal from the 206th Judicial District Court of Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division.

INTRODUCTION

1. The Plaintiff is New Life Adult Day Care, Inc. ("Plaintiff").
2. The Defendant is Philadelphia Indemnity Insurance Company ("Defendant").
3. Plaintiff commenced this first-party insurance case on August 31, 2017. Plaintiff asserted causes of action arising under Texas law for Defendant's alleged breach of contract, violation of the Prompt Payment of Claims Act (Tex. Ins. Code. Ch. 542), unfair claims settlement practices in violation of chapter 541 of the Texas Insurance Code, and breach of the duty of good faith and fair dealing.

4. Defendant was served with process on September 17, 2017. Defendant is therefore timely filing this Notice of Removal by removing this action “within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

VENUE IS PROPER

5. Pursuant to 28 U.S.C. § 1441(a), this action may be removed to this Court because it is the district and division embracing Hidalgo County, Texas, the county in which the state court action is pending.

BASIS FOR REMOVAL

6. This is a civil action that falls under the Court’s original jurisdiction pursuant to 28 U.S.C. § 1332(a) and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

A. Complete Diversity of Citizenship Exists Between All Plaintiffs and All Defendants.

7. Plaintiff is a Texas corporation. It was incorporated in 1991 as “Donna Adult Day Care Inc.” and subsequently registered New Life Adult Day Care 3 and New Life Adult Day Care 4 as assumed names. Plaintiff’s principal place of business is in Mission, Texas. See **Exhibit 1** (Plaintiff’s Articles of Incorporation, Plaintiff’s most recent franchise tax filing and assumed name page).

8. Defendant is a corporation organized and existing under the laws of the State of Pennsylvania. See **Exhibit 2** (affidavit of Eugene Angiolillo, attesting that Defendant is incorporated in and maintains its principal place of business in Pennsylvania).

9. Complete diversity of citizenship therefore exists between all plaintiffs and all defendants.

B. The Amount in Controversy Exceeds \$75,000.

10. Plaintiff is seeking over \$200,000 in damages. Pl.'s Orig. Pet. ¶ 22, at 6. Plaintiff therefore seeks damages, exclusive of interest and attorney's fees, in excess of the jurisdictional minimum of \$75,000.

C. Removal Is Appropriate Under the Court's Diversity Jurisdiction.

11. In light of these facts, the state court claim may be removed to this Court because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought, 28 U.S.C. § 1441(b)(2); and (iii) the amount in controversy exceeds \$75,000, exclusive of interests and costs.

FILING OF REMOVAL PAPERS

12. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all other counsel of record. Further, Defendant is filing a copy of this Notice of Removal with the Clerk of the 206th

Judicial District Court of Hidalgo County, Texas, where Plaintiff commenced this action.

13. Defendant is filing the following items concurrently with this Notice of Removal, or attaching them to this Notice of Removal as required by Southern District of Texas Local Rule 81:

- (a) a completed version of JS-44 Civil Cover Sheet (**Exhibit 3**);
- (b) all executed process in the case (**Exhibit 4**);
- (c) an index of all documents that identifies each document filed in the state court action, except discovery material, with each document individually tabbed and arranged in chronological order according to the state court file date, with copies of each such document (**Exhibit 5**);
- (d) any orders signed by the state judge (**none**);
- (d) a copy of the docket sheet in the state court action (**Exhibit 6**); and
- (f) a list of all counsel of record (**Exhibit 7**).

CONCLUSION

14. Defendant Philadelphia Indemnity Insurance Company gives notice to the Court of its removal of the above-captioned action from the 206th Judicial District Court of Hidalgo County, Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas, McAllen Division, as provided by law.

Dated: September 21, 2017

Respectfully submitted,

/s/ William R. Pilat

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CERTIFICATE OF SERVICE

I certify that on September 21, 2017, a true and correct copy of the foregoing *Notice of Removal* was forwarded to all other counsel of record, as listed below, through the electronic case filing system of the United States District Court for the Southern District of Texas:

John A. Millin IV
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/s/ William R. Pilat
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